



Indiana County Courthouses

The Indiana Prosecutor

RECENT DECISIONS UPDATE

• LONG AWAITED *MYERS* OPINIONS PUBLISHED BY THE SUPREME COURT

On June 3, 2004, and November 23, 2004, the Indiana Supreme Court granted transfer in two cases each captioned *Myers v. State*. The first *Myers* case, the case of John P. Myers, originated in Scott Superior Court. The second, the case of James Thomas Myers, came to the appellate courts from the Elkhart Circuit Court.

On December 21, 2005, the Supreme Court published its opinions in both of these cases. Each is of great importance to prosecutors. Both opinions were authored by Justice Brent Dickson.

John P. Myers v. State

John Myers filed an interlocutory appeal after the Scott Superior Court denied his motion to suppress the firearm taken from his Jeep by school officials after a trained narcotics dog alerted to the vehicle. The Supreme Court affirmed the denial of that motion.

The defendant first argued that the school officials at Austin High School, aided by the police, were not justified in utilizing a specially trained narcotics dog to do a “walk-around” of his car parked on the school’s parking lot. Myers contended that such a “walk around” had to be supported by reasonable individualized suspicion. Myers argued that the dog sniff in his case lacked such individualized suspicion and thus the evidence found in his Jeep after the alert of the dog should have been suppressed.

Quoting from a 2005 U.S. Supreme Court opinion, *Illinois v. Caballes*, the Indiana Supreme Court reiterated that , “A dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment”. In the instant case, the defendant’s vehicle was subjected to a dog sniff as it sat unoccupied in the school’s parking lot. In light of *Caballes*, the Indiana Court rejected the defendant’s claim that reasonable individualized suspicion is required by the federal constitution before officials can use a trained dog to sniff the outside of the Myers’ vehicle.

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Recent Decisions Update (cont'd)

The defendant's second contention was that the warrantless search of his vehicle was not justified by the automobile exception nor by his consent. Resolution of this challenge required the Court to consider whether the search of Myer's vehicle was governed by the restrictive requirements of the Fourth Amendment or the less demanding constitutional standard applied to searches and seizures conducted by school officials.

The Court concluded that where a search is initiated and conducted by school officials alone, or where school officials initiate a search and police involvement is minimal, a "reasonableness standard" is applicable. In contrast, ordinary warrant requirements apply where "outside" police officers initiate or are predominantly involved in, a school search of a student or student property for police investigative purposes.

In *Myers*, the decision to conduct the sweep for drugs in the school and adjacent parking lot was made by school officials. The areas to be searched and the timing of the searches were also set by the school. The Supreme Court concluded that in *Myers*' case the school initiated and conducted the search and sought only supporting police resources such as trained narcotics dogs that were not otherwise available to the school. The propriety of the vehicle search under the Fourth Amendment was, therefore, governed by the reasonableness test, not the general warrant requirements of the Fourth Amendment, the Supreme Court concluded.

To determine whether a school search is "reasonable", the Court said the following factors must be considered: (1) whether the action was justified at its inception; and (2) whether the search conducted was reasonably related in scope to the circumstances that justified the interference in the first place. A search by school officials is justified at its inception if "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" and a search is permissible in scope if "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

The Court concluded that the search of *Myers*' vehicle was reasonable at its inception in that it was conducted only after the alert of a police narcotics dog. Furthermore, the court said, the search was reasonable in scope in that the school officials limited their search to those areas upon which the dog had alerted. The search of *Myers*' vehicle by the school officials was deemed reasonable and the trial court's denial of the defendant's motion to suppress the firearm seized from his vehicle was affirmed.

James Thomas Myers

Again, the propriety of the "sniff" by a trained narcotics dog was at the crux of the *James Thomas Myers* opinion by the Supreme Court on December 21.

Indiana State Trooper Shawn Turner followed *Myers* into his driveway after observing *Myers* fail to signal a turn and participate in a "speed contest." By the time the trooper pulled into the drive and parked behind the defendant's car, however, *Myers* had already exited his vehicle and was heading toward his residence. The trooper ordered *Myers* to return to his vehicle and requested that he produce his license and registration. The officer noted that *Myers*' hands were shaking and that he was very nervous as he handed the requested documents to the trooper. *Myers*' pupils were also dilated, even though the stop was made at night. Trooper Turner also noted a mist and the strong scent of cologne in the passenger compartment of *Myers*' car as he approached. Finally, Turner had been previously advised that *Myers* was suspected by the Goshen Drug Unit of involvement in drug activity in Elkhart County.

Trooper Turner returned to his car to radio for verification of *Myers*' license and registration and at the same time requested a canine unit be sent to his location. About 13 minutes after the initial stop, the canine arrived. When the dog arrived the trooper was explaining to *Myers* the ticket he had written. During a walk-around of *Myers*' car the dog reacted to the exterior passenger side of the vehicle. An officer then opened the door and the dog sniffed the interior of the car. Again the dog alerted. The dog then led the officers to the trunk of *Myers*' car. A warrantless search of the defendant's car was conducted based upon that alert. That search revealed cologne in the car's console, methamphetamine in the glove compartment; and marijuana, meth, a ledger and scales in the trunk.

Recent Decisions Update (cont'd)

James Myers first challenged the propriety of the dog sniff of his vehicle. Again relying on *Illinois v. Caballes*, the Indiana Supreme Court held that conducting a dog sniff did not change the character of a traffic stop that was lawful at its inception and otherwise executed in a reasonable manner. The Court did note, however, that “a seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” The Supreme Court affirmed the trial court’s decision that the walk-around of Myers’ car was done in the course of the stop of that vehicle. The Court further held that the positive reaction of the drug dog to the exterior of the defendant’s vehicle, especially in light of Myers’ dilated pupils, extreme nervousness and the presence of heavy cologne constituted probable cause for further investigation.

The defendant also argued that a warrantless search of his car under authority of the automobile exception was not warranted in that his car was not “readily mobile” at the time of the search. The Indiana Supreme Court acknowledged that the decisions of the Indiana Court of Appeals have not been consistent regarding what constitutes ready mobility for purposes of the auto exception. The Supreme Court held that the auto exception does not require any additional consideration of the likelihood under the circumstances of the vehicle being driven away. “Readily mobile,” the Supreme Court said, means that all operational, or potentially operational motor vehicles are inherently mobile. Thus, a vehicle in temporary police control or otherwise confined is generally to be considered readily mobile and subject to a search under the auto exception if probable cause exists to believe that the vehicle contains contraband or evidence of a crime. Regardless of the fact that Myers’ car was temporarily confined as a result of the trooper’s car parked behind it, the car was nevertheless “readily mobile”, the Court said. The Court held that the positive dog alert to Myers’ car provided probable cause that the car contained contraband and therefore the warrantless search of Myers’ car was proper. The search was also deemed reasonable under Indiana Constitutional analysis, the Court concluded. The judgment of the trial court to admit the evidence found in Myers’ car was affirmed. ❖